

# SANDLER, RYAN & YOUNG, P.C.

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COUNSEL

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*Via Hand Delivery*

Jeff S. Jordan, Esq.  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR 6050  
Respondent Independent Voices

Dear Mr. Jordan:

I am responding on behalf of Independent Voices, an unincorporated association organized under Section 527 of the Internal Revenue Code, to a frivolous complaint filed by several disgruntled supporters of Mr. Ed Fallon, a losing congressional candidate in an Iowa primary election ("Fallon Supporters").

There is simply no reason to believe that Independent Voices acted in coordination with Boswell for Congress based on the assertions made by the Fallon Supporters in their complaint. Independent Voices exercised their Constitutional right to speak on issues of importance and did so without coordinating with any candidate, campaign committee, or party committee in full compliance with the requirements set forth in the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations.

For the reasons stated below, we respectfully request that the Commission find "no reason to believe" there was a violation and close this matter with respect to Independent Voices.

1. Independent Voices did not coordinate its issue advocacy communications with any candidate, campaign committee, or party committee.

Independent Voices sent three direct mail issue advocacy communications that were not made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee. For purposes of this response, any reference to a candidate, campaign committee, or party committee includes agents thereof. The declaration of Red Brannan, chair of Independent Voices, and Jeff Link, the political consultant to Independent Voices, confirming the facts, are attached.

The "evidence" of coordination provided by the Fallon Supporters would be laughable if it were not for the fact that Independent Voices has to waste time and resources responding to their complaint.

Specifically, the Fallon Supporters allege, without any evidence to support their claims, that Independent Voices coordinated with Boswell for Congress because they believe that (1) communications were sent "apparently to the same extensive list of voters;" (2) the "cards carried the similar phrasing, similar visual appearance, and same typefaces;" and, (3) the "same mailing-house number and same indicia symbol appeared on" the communications.

To bolster their argument, they claim that unknown persons having "studied closely each of these cards find it impossible to tell which of the oversized cards came from" Independent Voices or Boswell for Congress. Apparently, their expert(s) missed the clear and conspicuous disclaimers printed on each piece.

Similarly, the assertions made by the Fallon Supporters are incorrect and do not demonstrate a reason to believe that Independent Voices coordinated with Boswell for Congress:

**a. Mailing List:** The list of names used by Independent Voices was selected independently, not in coordination with Boswell for Congress. See Barran and Link declarations.

**b. Phrasing, appearance, and typeface:** Independent Voices' communications, do not carry "the similar phrasing, similar visual appearance, and same typefaces" as the Boswell for Congress communication. The three Independent Voices communications focus on the issues of crime and energy independence. The Boswell Campaign piece discusses Mr. Fallon's support for Ralph Nader in 2000.

With regard to the typeface "evidence," a simple review of the four pieces illustrates that the Fallon Supporters are wrong. The typeface used in the three Independent Voices pieces are similar with each other but completely different from the typeface used in the Boswell for Congress piece.

Contrary to the assertion made by the so-called expert(s) who studied these pieces carefully on behalf of the Fallon Supporters, the clear and conspicuous disclaimers make it easy, not impossible, to tell the difference between the Independent Voices communications and the Boswell for Congress communication.

Decisions concerning the content, design, and typeface of the Independent Voices communications were not made in coordination with any candidate, campaign committee, or party committee. See Barran and Link declarations.

**c. Mail House and Printer:** Independent Voices made the decision to use a mail house and printer independently of Boswell for Congress. There are only one or two union operated mail house and printers in Des Moines, Iowa so it is not indicative of anything to learn that two entities sending large volumes of mail, independently of each other, may both use the same firm. The mail house has a permit number that it uses for the convenience of its many customers. Customers make a payment to the mail house for postage and the mail house uses their permit number on the customer's mail in the standard and normal operations of its business.

The mail house and printer provided the basic function of printing, labeling, and delivering the communications to the U.S. post office for mailing. This vendor

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played no role whatsoever in decisions regarding the content, intended audience, timing means or mode of communication, or the size of the printed communications. The mail house and printer provided no information to Independent Voices material to the creation, production, or distribution of the communications. Each of those decisions was made by Independent Voices not in coordination with any candidate, campaign committee, or party committee. The mail house and printer simply printed the communications, labeled them, and delivered them to the U.S. post office. See Barran and Link declarations.

The Fallon Supporters provided no credible evidence to support their complaint that Independent Voices acted in coordination with Boswell for Congress. All material decisions concerning the content, intended audience, means or mode, media outlets used, timing, and size or prominence of its printed communications were made by Independent Voices. It did not make any decisions in coordination with Boswell for Congress.

## 2. Legal Analysis

Under the Act, an expenditure made by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of" a candidate constitutes an in-kind contribution. 2 U.S.C. §441a(a)(7)(B)(i). The regulations that implement these statutory provisions define "coordinated" and prescribe the treatment of a "coordinated" expenditure as an in-kind contribution. 11 C.F.R. §109.20(a) and (b).

To determine whether a communication is coordinated, 11 C.F.R. §109.21 sets forth a three-pronged test: (1) the communication must be paid for by a person other than a Federal candidate, a candidate's authorized committee, or political party committee, or any agent of the foregoing; (2) one or more of the content standards set forth in 11 C.F.R. § 109.21(c) must be satisfied; and (3) one or more of the six conduct standards set forth in 11 C.F.R. §109.21(d) must be satisfied. 11 C.F.R. §109.21(a).

The second prong of the coordination test consists of four content standards: (1) an "electioneering communication;" (2) a "public communication" that disseminates campaign materials prepared by a candidate; (3) a communication that "expressly advocates" the election or defeat of a clearly identified federal candidate; and (4) a public communication that refers to a clearly identified House candidate and is publicly distributed in the candidate's jurisdiction 90 days or fewer before a primary election. 11 C.F.R. §109.21(c).

The third prong of the coordination test consists of six conduct standards. If any one of the six conduct standards is engaged in by the person paying for the communication the conduct element will be satisfied. The conduct standards include: (1) communication made at the "request or suggestion" of the relevant candidate or committee; (2) communications made with the "material involvement" of the relevant candidate or committee; (3) communications made after one or more "substantial discussions" between the person paying for the communication and the relevant candidate or committee; (4) specific actions of a "common vendor"; (5) specific

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actions of a "former employee"; and (6) specific actions relating to the dissemination of campaign material. 11 C.F.R. §109.21(d)(1)-(6).

In this matter, the Independent Voices communications satisfy the first two prongs of the coordinated communications test, but not the third.

The first prong is satisfied because Independent Voices paid for the communications. 11 C.F.R. 109.21(a)(1). The second prong, the content standard, is satisfied because the direct mail public communications referred to a clearly identified House candidate, Ed Fallon and were publicly distributed in the candidate's jurisdiction 90 days or fewer before a primary election. 11 C.F.R. §109.21(c)(4)(i).

The third prong – the conduct requirements – was not engaged in by Independent Voices. The Fallon Supporters failed to allege which conduct standard is satisfied, arguing incorrectly that the legal standard prohibits Boswell for Congress from "communicating with those responsible in any 527 group."

The information in the complaint is not sufficient to demonstrate that Independent Values satisfied the conduct prong of the coordinated communications test. The complaint merely speculates that there was coordination and does not provide any credible evidence that the chair of Independent Voices or its consultant had any communications with Boswell for Congress sufficient to satisfy the conduct prong of the coordination test.

Independent Voices' communications were not made at the "request or suggestion" of, with the "material involvement" of, or after one or more "substantial discussions" with Boswell for Congress. There is no allegation that a "former employee" or independent contractor were involved in decision making. Nor is there any allegation that the communications involved specific actions relating to the dissemination of campaign material.

The only common vendor in this matter was a mail house and printer who provided basic printing and labeling services. This vendor played no role whatsoever in decisions regarding the content, intended audience, timing means or mode of communication, or the size of the printed communications. This vendor did not provide any information material to the creation, production, or distribution of the communications. Each of those decisions was made by Independent Voices not in coordination with any candidate, campaign committee, or party committee. See Barran and Link declarations.

The third prong of the coordination test is not satisfied. Therefore, Independent Voices did not act in coordination with Boswell for Congress.

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### **Conclusion**

Independent Voices did not coordinate its issue advocacy communications with Boswell for Congress. The Fallon Supporters failed to provide any relevant evidence to support their allegations. Independent Voices has provided evidence demonstrating that it did not coordinate with Boswell for Congress. For the reasons stated above, we respectfully request that the Commission find "no reason to believe" that Independent Voices violated 2 U.S.C. §441a and close this matter promptly.

Sincerely,



James Lamb

**Attachments**

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